

RESOLUTION NO. 2015 – 04

RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY
TO THE COMMUNITY DEVELOPMENT COMMISSION AS
THE NATIONAL CITY REDEVELOPMENT AGENCY
APPROVING AN AGREEMENT FOR LEGAL SERVICES
BETWEEN THE SUCCESSOR AGENCY
TO THE COMMUNITY DEVELOPMENT COMMISSION AS
THE NATIONAL CITY REDEVELOPMENT AGENCY,
THE CITY OF NATIONAL CITY, AND THE LAW FIRM OF
MAZZARELLA & MAZZARELLA, LLP, SUPERSEDING THE PRIOR
AGREEMENT FOR LEGAL SERVICES BETWEEN
THE SUCCESSOR AGENCY AND CITY, AND MAZZARELLA LORENZANA, LLP,
CONTINGENT UPON DEPARTMENT OF FINANCE APPROVAL,
WITH NO INCREASE IN THE PREVIOUSLY APPROVED
NOT TO EXCEED AMOUNT OF \$250,000 FOR HOURLY FEES

WHEREAS, the City of National City ("City") and the now dissolved Community Development Commission as the National City Redevelopment Agency ("CDC"), entered into an Agreement for Legal Services with Mazzarella Lorenzana, LLP, effective November 21, 2011 ("2011 Agreement") for the not to exceed amount of \$50,000 to pursue various claims against Rosenow Spevacek Group ("RSG") based on and related to the work RSG performed in connection with the 2007 Redevelopment Plan Amendment; and

WHEREAS, pursuant to ABx1 26 and AB1484, each "Successor Agency" has an obligation to minimize liabilities of its redevelopment agency; and

WHEREAS, per a November 21, 2011 agreement with Mazzarella Lorenzana, LLP (the "2011 Agreement"), compensation to that firm was a combination of a lower hourly rate for legal fees (\$150/hour) in addition to a contingency fee (no greater than 20%), with a not to exceed amount of \$50,000.00; and

WHEREAS, on January 21, 2012, the City Council adopted Resolution No. 2012-31 approving a First Amendment to the 2011 Agreement to increase the not to exceed amount by \$200,000 (the "First Amendment"), for a total not to exceed amount of \$250,000; and

WHEREAS, Mazzarella Lorenzana, LLP has changed its name, and seeks to enter into a new Agreement for Legal Services to reflect its name change to Mazzarella & Mazzarella, LLP, and to reflect the name of the Successor Agency to the Community Development Commission as the National City Redevelopment Agency ("Successor Agency") name in place of the dissolved CDC, and confirm the compensation structure of the reduced hourly rate of \$150 per hour with a not to exceed amount of \$250,000 (no increase from the original amount) in addition to confirming the reduced contingency fee of up to 20%.

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board of the Successor Agency to the Community Development Commission as the National City Redevelopment Agency ("Oversight Board") as follows:

Section 1. The foregoing recitals are true and correct, and are a substantive part of this Resolution.

Section 2. The Oversight Board hereby approves the Agreement for Legal Services between the Successor Agency and the City, and the Law Firm of Mazzarella & Mazzarella, LLP, superseding the prior Agreement for Legal Services between the Successor Agency and City, and Mazzarella Lorenzana, LLP, contingent upon State Department of Finance approval, with no increase in the previously approved not to exceed amount of \$250,000 for hourly fees;

Section 3. The Executive Director of the Successor Agency, or designee, is hereby authorized and directed to take such other actions and execute such other documents as are necessary to effectuate the intent of this Resolution on behalf of the Oversight Board;

Section 4. The Oversight Board concurs with the Successor Agency's determination that approval of this Resolution does not represent a "project" for purposes of CEQA, as that term is defined by Guidelines section 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines.

Section 5. The Oversight Board Secretary and/or Successor Agency Secretary shall certify to the adoption of this Resolution.

Section 6. Pursuant to California Health and Safety Code Section 34179(h), the State of California Department of Finance may review Oversight Board action; therefore, this Resolution shall be effective on the date five (5) business days after its adoption, absent and pending any request for review by the State of California Department of Finance.

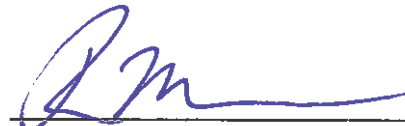
PASSED and ADOPTED this 20th day of May, 2015.

--- Signature Page to Follow ---

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NOW, THEREFORE, BE IT RESOLVED that the foregoing resolution was duly and regularly adopted at a regular meeting of the Oversight Board for the Successor Agency to the Community Development Commission as the National City Redevelopment Agency held on the 20th day of May 2015. by the following vote:

AYES: Fellows, Carson, Desrochers, Morrison, Perri, Hentschke
NOES: None
ABSENT: McCarthy
ABSTAIN: None



Ron Morrison, Chairman

ATTEST:



Brad Raulston, Executive Director
Secretary to the Oversight Board

APPROVED AS TO FORM:



Oversight Board Counsel
Edward Z. Kotkin, Esq.
Law Offices of Edward Z. Kotkin

**AGREEMENT FOR LEGAL SERVICES
BY AND BETWEEN**

**THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION
AS THE NATIONAL CITY REDEVELOPMENT AGENCY, THE CITY OF NATIONAL
CITY, AND MAZZARELLA & MAZZARELLA, LLP FOR LEGAL SERVICES
RELATED TO CLAIMS AGAINST THE ROSENOW SPEVACEK GROUP**

THIS AGREEMENT FOR LEGAL SERVICES (the "Agreement") is made between **THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION AS THE NATIONAL CITY REDEVELOPMENT AGENCY**, a public body, corporate and politic, (the "SA"), **THE CITY OF NATIONAL CITY**, a municipal corporation, (the "CITY"), (collectively, "Clients"), and **MAZZARELLA & MAZZARELLA, LLP**, (the "FIRM"), effective upon approval by the Oversight Board and California Department of Finance, and upon being effective supersedes and replaces the Agreement for Legal Services executed on November 21, 2011, as amended by Resolution 2012-31 on January 31, 2012. This Agreement sets forth the parties' mutual understanding concerning legal services to be provided by the FIRM and the fee arrangement for said services.

Article 1. Retainer. The Clients hereby retain the FIRM to assist in representing the Clients in connection with their dispute with Rosenow Spevacek Group ("RSG") arising from RSG's failure to meet its obligations pursuant to its February 20, 2007 contract to provide consulting services. The SA is currently facing a liability of approximately two-million dollars due to the award of attorneys fees in the matter of CYAC v. CDC, et al. (SDSC Case No. 37-2007-00076404-CU-El-CTL), which was a matter based on the former Community Development Commission's 2007 Redevelopment Plan Amendment. The underlying CYAC suit was based on and all related to the adoption of a redevelopment plan amendment to allow the former Community Development Commission to continue exercising its redevelopment functions, including extension of the eminent domain authority conferred upon redevelopment agencies.

Pursuant to ABx1 26 and AB1484 legislation, the SA has an obligation to minimize liabilities of its redevelopment agency. On February 1, 2012, all California redevelopment agencies were dissolved, successor agencies were established as successor agencies to the former redevelopment agencies pursuant to Health and Safety Code Section 34173, and successor agencies are tasked with paying, performing, and enforcing the enforceable obligations of the former redevelopment agencies. The purpose of this engagement is to pursue indemnity claims and other theories of recovery to minimize or eliminate the pending liability described herein as well as other damages as a result of RSG's work. The attorneys with primary responsibility in this matter are Mark C. Mazzarella and Daral Mazzarella.

Article 2. Scope of Services. Clients shall have the right in its sole discretion to determine the particular services to be performed by the FIRM under this Agreement. It is expected that the FIRM will work with the City Attorney, SA General Counsel, CITY and SA staff.

Article 3. Compensation. The FIRM will be compensated by a blend of discounted hourly fees and contingency fees. The hourly component of the FIRM's Hourly Fees shall be paid at the following rate:

Attorneys: \$150.00 per hour

Paralegals \$ 50.00 per hour

In addition to the Hourly Fees due the FIRM, the FIRM shall be entitled to a contingency fee at percentages which reflect approximately 50% of the contingency fee normally charged by the FIRM. The contingency fee is not set by law, but is negotiable.

If no recovery is obtained for the Clients in this case, Clients shall owe no contingency fee to the FIRM, but the SA shall pay the costs and expenses as well as the hourly component of the FIRM's fee. If any recovery is obtained for the Clients in this case, whether by way of settlement, judgment or otherwise, SA agrees to pay the FIRM 12.5% of the "amount recovered" if the case is resolved prior to the selection of the arbitrators, and 16.5% of the amount recovered thereafter until 60 days before the first date the matter is set for arbitration, and 20% thereafter through the end of arbitration. Compensation for any appeal shall be negotiated and agreed upon separate from this Agreement.

The "amount recovered" shall equal the total gross amount actually paid by or recovered from adverse parties for the benefit of SA, including amounts received as a result of settlement, award, or judgment, before and reduction for costs, or expenses, liens and/or payments due to third parties. If payment of all or any part of the amount to be received will be deferred (such as in the case of any annuity, a structured settlement, or periodic payments), the "amount recovered", for purposes of this Agreement, will be any initial lump sum payment plus the present value at the time of settlement of the payment to be received or the cost to the defendant of purchasing the annuity or deferred payment asset. The full attorney's fees due to the FIRM will be paid out of the initial lump sum payment. If the initial lump sum payment is insufficient to pay the FIRM's fees in full, the balance will be paid from subsequent payments of the recovery before any distribution to SA.

Any award of attorney's fees made by the court and recovered from the adverse parties for benefit of the Clients will be treated the same as any other amount recovered.

All costs of the suit, including those described in the following paragraph, which the SA has not previously paid, will be paid to the FIRM entirely from SA's share of any recovery.

If no recovery is obtained for SA by way of any settlement or after trial or arbitration, then no contingency attorney's fees will be charged to SA, and SA will be responsible only for the payment of hourly component of the FIRM's compensation.

Article 4. The following provisions and procedures shall be followed by the FIRM:

A. The FIRM shall not use more than one attorney for the same specific task without Client's approval. The FIRM may use the minimum number of attorneys for this

engagement consistent with good professional practice after consulting with and obtaining approval by Clients.

B. The SA has appropriated or otherwise duly authorized the payment of an amount not to exceed \$250,000 for Hourly Fees and out-of-pocket disbursements pursuant to this Agreement. In no event shall the total Hourly Fees plus out-of-pocket disbursements exceed this amount without written authorization of the SA.

C. The FIRM shall keep the Clients advised monthly as to the level of attorney hours and client services performed under Article 1. The FIRM will not charge the SA for travel time; however, the FIRM may charge for work performed for the SA during any travel time.

D. The SA further agrees to reimburse the FIRM, in accordance with the procedures set forth in this Article, for telephone, fax, mail, messengers, federal express deliveries, document reproduction, client-requested clerical overtime, lodging, and similar out-of-pocket expenses charged by the FIRM as a standard practice to its clients generally, with the exception of travel and meals. In any billing for disbursements, the FIRM shall provide the SA with a statement breaking down the amounts by category of expense. The following items shall not be reimbursed, unless the SA has specifically agreed otherwise:

(1) Word processing, clerical, or secretarial charges, whether expressed as a dollar disbursement or time charge;

(2) Secretarial overtime;

(3) Storage of open or closed files, rent, electricity, local telephone, postage, receipts or transmission of telecopier documents, or any other items traditionally associated with overhead;

(4) Photocopy charges in excess of \$.15 (fifteen cents) per page;

(5) Auto mileage rates in excess of the rate approved by the Internal Revenue Service for income tax purposes;

(6) Equipment, books, periodicals, research materials, Westlaw/Lexis, or like items;

(7) Express charges, overnight mail charges, messenger services, or the like, without Clients' prior consent. Clients expect these expenses to be incurred in emergency situations only. Where case necessity requires the use of these services, Clients will consider reimbursement on a case-by-case basis;

(8) Travel and meals; and

(9) Late payment charge and/or interest. Due to the nature of SA's payment process, SA will not pay any late charges or interest charges on bills. Every effort will be made to pay bills promptly.

E. Bills from the FIRM should be submitted to Claudia Silva, City Attorney, City of National City, 1243 National City Boulevard, National City, CA 91950-4301. The individual time and disbursement records customarily maintained by the FIRM for billing evaluation and review purposes shall be made available to the SA in support of bills rendered by the FIRM.

F. The FIRM agrees to forward to the SA a statement of account for each one-month period of services under this Agreement, and the SA agrees to compensate the FIRM on this basis. The FIRM will consult monthly with the CDC as to the number of attorney hours and client out-of-pocket disbursements which have been incurred to date under this Agreement, and as to future expected levels of hours and disbursements.

G. Billing Format. Each billing entry must be complete, discrete and appropriate.

(1) Complete.

(a) Each entry must name the person or persons involved. For instance, telephone calls must include the names of all participants.

(b) The date the work was performed must be included.

(c) The hours should be billed in .10 hour increments.

(d) The specific task performed should be described, and the related work product should be reference ("telephone call re: trial brief," "interview in preparation for deposition").

(e) The biller's professional capacity (partner, associate, paralegal, etc.) should be included

(2) Discrete: Each task must be set out as a discrete billing entry; neither narrative nor block billing is acceptable.

(3) Appropriate:

The SA does not pay for clerical support, administrative costs, overhead costs, outside expenses or excessive expenses. For example, the SA will not pay for secretarial time, word processing time, air conditioning, rental of equipment, including computers, meals served at meetings, postage, online research, or the overhead costs of sending or receiving faxes. Neither will the SA pay for outside expenses such as messenger delivery fees, outside photocopying, videotaping of depositions, investigative services, outside computer litigation support services, or overnight mail.

H. Staffing. Every legal matter should have a primarily responsible attorney and a paralegal assigned. Ultimately, staffing is an SA decision, and the SA's representative may review staffing to insure that it is optimal to achieve the goals of the engagement at the least cost.

(1) Paralegals are to be used to the maximum extent possible to enhance efficiency and cost-effectiveness. All tasks typically considered associate work should be considered for assignment to a paralegal. Written authorization from the SA must be had before associate hours billed exceed paralegal hours billed.

(2) Once an attorney is given primary responsibility for an engagement, that person should continue on the legal matter until the matter is concluded or the attorney leaves the FIRM. The SA will not pay the costs of bringing a new attorney up to speed.

(3) If more than one attorney is going to perform the same task, prior approval from the SA must be had. This includes document review.

Article 5. Independent Contractor. The FIRM shall perform services as an independent contractor. It is understood that this contract is for unique professional services. Accordingly, the duties specified in this Agreement may not be assigned or delegated by the FIRM without prior written consent of the SA. Retention of the FIRM is based on the particular professional expertise of the individuals rendering the services required in the Scope of Services.

Article 6. Confidentiality of Work. All work performed by the FIRM including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the FIRM pursuant to this Agreement is for the sole use of the Clients. All such work product shall be confidential and not released to any third party without the prior written consent of the Clients.

Article 7. Compliance with Controlling Law. The FIRM shall comply with all applicable laws, ordinances, regulations, and policies of the federal, state, and local governments as they pertain to this Agreement. In addition, the FIRM shall comply immediately with any and all directives issued by the Clients or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

Article 8. Acceptability of Work. The Clients shall decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the acceptable completion of this Agreement, and the amount of compensation due. In the event the FIRM and the Clients cannot agree to the quality or acceptability of the work, the manner of performance and/or the compensation payable to the FIRM in this Agreement, the Clients or the FIRM shall give to the other written notice. Within ten (10) business days, the FIRM and the Clients shall each prepare a report which supports their position and file the same with the other party. The Clients shall, with reasonable diligence, determine the quality or acceptability of the work, the manner of performance and/or the compensation payable to the FIRM.

Article 9. Indemnification. The FIRM agrees to indemnify and hold the Clients, and their agents, officers, and employees harmless from and against all claims asserted or liability established for damages or injuries to any person or property, including injury to the FIRM's employees, agents, or officers, which arise from or are connected with or caused or claimed to be caused by the acts or omissions of the FIRM and its agents, officers, or employees in performing the work or other obligations under this Agreement, and all expenses of investigating and defending against same; provided, however, that this indemnification and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the SA, the CITY, their agents, officers, or employees.

Article 10. Insurance. The FIRM shall not commence work under this Agreement until it has obtained all insurance required in this Article with a company or companies acceptable to the Clients. At its sole cost and expense, the FIRM shall take and maintain in full force and effect at all times during the term of this Agreement the following policies of insurance:

A. Commercial general liability insurance with a combined single limit of not less than one million dollars (\$1,000,000).

B. For all of the FIRM's employees that are subject to this Agreement, to the extent required by the State of California, Workers' Compensation Insurance in the amount required by law.

C. Errors and omissions insurance in an amount not less than one million dollars (\$1,000,000) per claim.

D. All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies licensed to do business in the State of California. The policies carried pursuant to paragraph 10.A above shall name as additional insureds the Clients and their elected officials, officers, employees, agents, and representatives. All policies shall contain language, to the extent obtainable, to the effect that: (1) the insurer waives the right of subrogation against the Clients and their elected officials, officers, employees, agents, and representatives; (2) the policies are primary and not contributing with any insurance that may be carried by the Clients; and (3) the policies cannot be cancelled or materially changed except after thirty (30) days' notice by the insurer to the Clients by certified mail. Before this Agreement shall take effect, the FIRM shall furnish the Clients with copies of all such policies upon receipt of them, or a certificate evidencing such insurance. The FIRM may effect for its own account insurance not required under this Agreement.

Article 11. Drug Free Work Place. The FIRM agrees to comply with the Clients' Drug-Free Workplace requirements. Every person awarded a contract by the Clients for the provision of services shall certify to the Clients that it will provide a drug-free workplace. Any subcontract entered into by the FIRM pursuant to this Agreement shall contain this provision.

Article 12. Non-Discrimination Provisions. The FIRM shall not discriminate against any subcontractor, vendor, employee or applicant for employment because of age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. The FIRM will take positive action to insure that applicants are employed without regard to their age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The FIRM agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the Clients setting forth the provisions of this non-discrimination clause.

Article 13. Effective Date and Term. This Agreement shall be effective upon approval by the Oversight Board and California Department of Finance, and will continue until written notice of cancellation. This Agreement may be terminated at any time by either party with sixty (60) days' written notice to the other. Notice of termination by the Firm shall be given to the City Attorney.

Article 14. Notification of Change in Form. The FIRM has the right to effect changes in form including but not limited to: the change in form from a partnership to a professional law corporation; the change in form of any partner or partners from an individual or individuals to a professional law corporation; the change in form of any corporate partner or partners to any individual partners. The CDC shall be promptly notified in writing of any change in form.

Article 15. Notices. In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage paid. When so given, such notice shall be effective from the date of mailing of the

notice. Unless otherwise provided by notice in writing from the respective parties, notice to the Agency shall be addressed to:

Claudia Gacitua Silva
City Attorney
City of National City
1243 National City Boulevard
National City, CA 91950-4301

Notice to the FIRM shall be addressed to:

Mark C. Mazzarella, Esq.
Mazzarella & Mazzarella, LLP
1620 Fifth Avenue, Suite 600
San Diego, CA 92101

Nothing contained in this agreement shall preclude or render inoperative service or such notice in the manner provided by law.

Article 16. Headings. All article headings are for convenience only and shall not affect the construction or interpretation of this Agreement.

Article 17. Miscellaneous Provisions.

A. **Time of Essence.** Time is of the essence for each provision of this Agreement.

B. **California Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of California. The FIRM covenants and agrees to submit to the personal jurisdiction of any state court in the State of California for any dispute, claim, or matter arising out of or related to this Agreement.

C. **Integrated Agreement.** This Agreement, including attachments and/or exhibits, contains all of the agreements of the parties and all prior negotiations and agreements are merged in this Agreement. This Agreement cannot be amended or modified except by written agreement, and mutually agreed upon by the Clients and the FIRM.

D. **Severability.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid, or illegal.

E. **Waiver.** The failure of the Clients to enforce a particular condition or provision of this Agreement shall not constitute a waiver of that condition or provision or its enforceability.

F. **Conflict of Interest.** During the term of this Agreement, the FIRM shall not perform services of any kind for any person or entity whose interests conflict in any way with those of the Clients. This prohibition shall not preclude the Clients from expressly agreeing to a waiver of a potential conflict of interest under certain circumstances.

G. **No Obligations to Third Parties.** Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, or obligate any of the parties hereto, to any person or entity other than the parties hereto.

H. Construction. The parties acknowledge and agree that (i) each party is of equal bargaining strength, (ii) each party has actively participated in the drafting, preparation and negotiation of this Agreement, and (iii) any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement on the 16th day of March, 2015.

SUCCESSOR AGENCY TO THE
COMMUNITY DEVELOPMENT
COMMISSION AS THE NATIONAL CITY
REDEVELOPMENT AGENCY

By: J.C. for
Ron Morrison, Chairman

MAZZARELLA & MAZZARELLA, LLP

By: [Signature]
Mark Mazzarella, Esq.

APPROVED AS TO FORM:

By: [Signature]
Claudia Gacitua Silva
SA General Counsel

CITY OF NATIONAL CITY

By: J.C. for
Ron Morrison, Mayor

APPROVED AS TO FORM:

By: [Signature]
Claudia Gacitua Silva
City Attorney